

## CHAPTER 2.54

### CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

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#### **2.54.010 Declaration of Policy; Public Records.**

The proper operation of democratic government requires that public officers and employees be honest, impartial, and responsible to the people; that governmental decisions and policy be made in the proper channels of the governmental structures; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, the following regulations on conflict of interest are established for all City of Lincoln officers and employees, whether elected or appointed, paid or unpaid, including members of all boards, commissions, and committees of the city. The purpose of these regulations is to establish guidelines setting forth those actions which are incompatible with the best interest of the citizens of the City of Lincoln and directing disclosure by such officers and employees of private financial or other interests in matters affecting city government.

In addition to other statements and reports required by law, all correspondence directed to a member of the City Council with regard to the matters pending before the City Council are deemed to be public documents and shall be made a part of the records of the city and as such filed with the City Clerk's office and open to inspection by the public prior to the City Council taking action on the subject, and in addition, any correspondence directed to the Mayor or Mayor's office concerning matters pending before the City Council or under consideration by the Mayor for veto shall likewise be deemed to be public documents and shall be filed with the City Clerk's office and open to inspection by the public prior to the Mayor taking action on the subject. (Ord. 15399 §1; January 8, 1990: P.C. §2.08.015: Ord. 12251 §1; April 10, 1979: prior Ord. 6899 §1; April 13, 1959).

#### **2.54.020 Definitions.**

**Business** shall mean a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity, or entity.

**Financial interest** shall mean any interest which shall yield directly or indirectly a monetary or other material benefit (other than the duly authorized salary or compensation for his services to the city) to

the officer or employee or to any person employing or retaining the services of the officer or employee, or to the immediate family of the officer or employee.

**Income** shall mean any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, and shall include all income from whatever source derived.

**Officer or employee** shall mean any person elected or appointed to, or employed or retained by, any public office or public body of the City of Lincoln, whether paid or unpaid and whether part-time or full-time.

**Public body** shall mean the City Council, or any agency, authority, board, body, commission, committee, department, division, or office of the City of Lincoln.

**Immediate family** shall mean a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or by that individual's spouse as a dependent for federal income tax purposes.

**Remote interest** shall mean:

- (1) that of a nonsalaried officer of a nonprofit corporation;
- (2) that of a member of a nonprofit cooperative marketing association;
- (3) the ownership of a legal or equitable interest not exceeding \$5,000.00 or five percent of any business, provided the total annual income derived from such business does not exceed five percent of the total annual income of such officer or employee;
- (4) that of an officer in being reimbursed for actual and necessary expenses incurred in the performance of official duties;
- (5) that of a recipient of public services generally provided by the city on the same terms and conditions if such person were not an officer or employee.

Significant financial interest shall mean any financial interest, other than a remote interest. (Ord. 15399 §2; January 8, 1990: P.C. §2.08.025; Ord. 13732 §1; November 14, 1983: prior Ord. 12251 §2; April 10, 1978: Ord. 6899 §2; April 13, 1959).

#### **2.54.030 Rules of Conduct Concerning Significant Financial Interests.**

(a) Any officer or employee who has, or a member of whose immediate family has a significant financial interest in any contract, sale, purchase, or service to the city or any public body thereof, or a contractor supplying the city or any public body thereof other than under the circumstances governed by Section 2.54.040, shall make known that interest in the official records of the city in the manner hereinafter prescribed, and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

(b) Any officer or employee who has, or a member of whose immediate family has, a significant financial interest in any decision of any public body of which the officer or employee is a member, or by whom the officer or employee is employed or retained or to which the officer or employee makes recommendations, shall make known such interest in the official records of the city in the manner hereinafter prescribed and shall refrain from participating in any manner as an officer or employee in such decision. The provisions of this subsection shall not apply to elected officials who are subject to the requirements of the Nebraska Political Accountability and Disclosure Act; provided, however, that copies of the disclosure statements required by said act shall be filed in the office of the City Clerk.

(c) If any officer or employee has any significant financial interest as specified in subsections (a) and (b) of this section, such person shall immediately upon discovery thereof declare such interest by filing a sworn statement with the City Clerk, which statement shall contain the position held with the city by such person and the nature of such person's interest. (Ord. 15399 §3; January 8, 1990: P.C. §2.08.035: Ord. 13732 §2; November 14, 1983: prior Ord. 12251 §3; April 10, 1978).

#### **2.54.040 Contracts; Declaration of Interest.**

(a) No officer or employee of the city may be interested in any contract to which the city, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree by a court of proper jurisdiction as to any person who entered into a contract or took assignment thereof with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the city or by any resident thereof and must be brought within one year after the contract is signed or assigned. The prohibition in this section shall apply only when the officer or the officer's parent, spouse, or child (1) has an ownership interest of five percent or more in any business involved in the contract, or (2) will receive a direct pecuniary fee or commission as a result of the contract.

(b) The provisions in subsection (a) of this section shall not apply if the interested officer or employee:

(1) Files with the City Clerk a statement indicating the nature and extent of such interest, prior to official consideration of the contract;

(2) Does not vote on the matter of granting the contract, except that if the number of members of the board declaring an interest in the contract would prevent the board, with all members present, from securing a quorum on the issue, then all members may vote on the matter;

(3) Does not act, directly or indirectly, for the city as to inspection or performance under such contract; and

(4) An officer who (i) is an employee of the business involved in the contract, and (ii) has no ownership interest or will not receive a pecuniary fee, as prescribed in subdivisions (a)(1) and (a)(2) of this section, shall not be deemed to have an interest within the meaning of this section.

(c) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of the city by a financial institution shall not be considered a contract under the provisions of this section. The ownership of less than five percent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section. Notwithstanding the provision of Subdivision (b)(2) of this section, if an officer's parent, spouse, or child is an employee of the city, the officer may vote on all issues of the contract which are generally applicable to all employees or all employees within a classification and do not single out his parent, spouse, or child for special action. If an officer has the power to employ personnel and hires the officer's parent, spouse, or child, such officer shall disclose the hiring pursuant to subsection (d), except that if the parent, spouse, or child is already employed in the position at the time the officer takes office and such position does not change, no disclosure need be made. Notwithstanding any other provisions of this section, any contract entered into with an interested officer or employee of the city shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the city.

(d) The City Clerk shall maintain, separately from other records, a ledger containing the information listed in subdivisions (1) through (5) of this subsection about every contract entered into by the city in which an officer or employee of the city has an interest as specified in subsection (a) of this section

and for which disclosure is made as provided in subsection (b) of this section. Such information shall be kept in the ledger, in the case of an officer, for five years from the date of the officer's last day in office; in the case of an employee for five years, and shall include:

- (1) Names of the contracting parties;
- (2) Nature of the interest of the officer or employee in question;
- (3) Date that the contract was approved by the city;
- (4) Amount of the contract;
- (5) Basic terms of the contract.

The information supplied relative to the contract shall be provided to the City Clerk not later than ten days after the contract has been signed by both parties. The ledger kept by the Clerk shall be available for public inspection during the normal working hours of the office in which it is kept.

(e) An open account which is established for the benefit of the city with the business in which an officer or employee has an interest shall be deemed a contract subject to the provisions of this section. The statement required to be filed pursuant to subsection (e) shall be filed within ten days after such account is opened. Thereafter, the City Clerk shall maintain a running account of all amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to the provisions of this section. (Ord. 15399 §4; January 8, 1990: P.C. §2.08.040: Ord. 13881 §1; July 2, 1984: prior Ord. 13732 §3; November 14, 1983).

#### **2.54.050 Prohibited Acts.**

(a) No present or former officer or employee may represent another person for compensation before the city or any public body thereof while in office or employed for a period of one year from the date of termination of their office or employment concerning any matter with which such officer or employee was directly concerned and in which such officer or employee personally participated during their employment or service by a substantial and material exercise of administrative discretion either during their holding of office or employment or for a period of one year thereafter.

(b) During the period of employment or service and for two years thereafter, no officer or employee may disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired in the course of their official duties which has been clearly designated as confidential, when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business. No officer or employee shall disclose or use, without appropriate authorization, any information acquired in the course of their official duties which is declared confidential by law.

(c) No officer or employee may use or attempt to use their official position to secure any valuable thing or valuable benefit for themselves that would not ordinarily accrue to them in the performance of their official duties, which thing or benefit is of such character as to manifest a substantial and improper influence. (Ord. 15399 §5; January 8, 1990: P.C. §2.08.045: Ord. 12251 §4; April 10, 1978).

#### **2.54.060 Additional Income Prohibited for Services.**

(a) No officer or employee may receive or agree to receive, directly or indirectly, compensation other than as provided by law for any service rendered or to be rendered by such officer

or employee personally in any case, proceeding, application, or other matter which is pending before any public body of which he or she is an officer or employee.

(b) This section shall not be construed to prohibit the rendering of any service seeking the performance of ministerial action by the city or any public body thereof, including but not limited to, the filing of applications for permits, licenses, and other documents. For the purposes of this subsection, "ministerial action" means any action to be taken on a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of judgment by an officer or employee upon the propriety of the action being taken. (Ord. 15399 §6; January 8, 1990: P.C. §2.08.055: Ord. 12251 §5; April 10, 1978).

#### **2.54.070 Forfeiture of Office.**

Whenever any officer or employee is found by a court of competent jurisdiction in an action instituted by the City of Lincoln, to have knowingly, willfully, or intentionally concealed or failed to disclose any significant financial interest or is found to have violated any provisions of this chapter, he shall thereupon forfeit his office and said office shall, by said court, be declared to be vacant from and after the entry of such judgment. (Ord. 15399 §7; January 8, 1990: P.C. §2.08.065: Ord. 12251 §6; April 10, 1978).

#### **2.54.080 Penalty.**

Any officer or employee who knowingly, willfully, or intentionally conceals or fails to disclose any significant financial interest or who violates any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$100.00 recoverable with costs. (Ord. 15399 §8; January 8, 1990: P.C. §2.08.075: Ord. 13732 §4; November 14, 1983: prior Ord. 12251 §7; April 10, 1978).